

## **§ 784.135**

products by employees of the fishing vessel at sea as an incident to, or in conjunction with the fishing operations of the vessel.

### **§ 784.135 "Packing."**

The packing of the various named marine products at sea as an incident to, or in conjunction with, the fishing operations of the vessel is an exempt operation. The term "packing" refers to the placing of the named product in containers, such as boxes, crates, bags, and barrels. Activities such as washing, grading, sizing, and placing layers of crushed ice in the containers are deemed a part of packing when performed as an integral part of the packing operation. The packing operation may be a simple or complete and complex operation depending upon the nature of the marine product, the length of time out and the facilities aboard the vessel. Where the fishing trip is of short duration, the packing operation may amount to no more than the simple operation, of packing the product in chipped or crushed ice in wooden boxes, as in the case of shrimp, or placing the product in wooden boxes and covering with seaweed as in the case of lobsters. Where the trips are of long duration, as for several weeks or more, packing the operations on fishing vessels with the proper equipment sometimes are integrated with first processing operations so that together these operations amount to readying the product in a marketable form. For example, in the case of shrimp, the combined operations may consist of the following series of operations—washing, grading, sizing, placing 5-pound boxes already labeled for direct marketing, placing in trays with other boxes, loading into a quick freezer locker, removing after freezing, emptying the box, glazing the contents with a spray of fresh water, replacing the box, putting them in 50-pound master cartons and finally stowing in refrigerated locker.

## **29 CFR Ch. V (7-1-14 Edition)**

### **GENERAL CHARACTER AND SCOPE OF THE SECTION 13(a)(4) EXEMPTION**

#### **§ 784.136 "Shore" activities exempted under section 13(b)(4).**

Section 13(b)(4) provides an exemption from the overtime but not from the minimum wage provisions of the Act for "any employee employed in the canning, processing, marketing, freezing, curing, storing, packing for shipment, or distributing" aquatic forms of animal and vegetable life or any by-products thereof. Originally, all these operations were contained in the exemption provided by section 13(a)(5) but, as a result of amendments, first "canning", in 1949, and then the other operations in 1961, were transferred to section 13(b)(4). (See the discussion in §§ 784.102 to 784.105.) These activities are "shore" activities and in general have to do with the movement of the perishable aquatic products to a non-perishable state or to points of consumption (S. Rept. 145, 87th Cong., first session, p. 33).

#### **§ 784.137 Relationship of exemption to exemption for "offshore" activities.**

The reasons advanced for exemption of employment in "shore" operations, now listed in section 13(b)(4), at the time of the adoption of the original exemption in 1938, had to do with the difficulty of regulating hours of work of those whose operations, like those of fishermen, were stated to be governed by the time, size, availability, and perishability of the catch, all of which were considered to be affected by natural factors that the employer could not control (see 83 Cong. Rec. 7408, 7422, 7443). The intended limited scope of the exemption in this respect was not changed by transfer of the "shore" activities from section 13(a)(5) to section 13(b)(4). The exemption of employment in these "shore" operations may be considered, therefore, as intended to implement and supplement the exemption for employment in "offshore" operations provided by section 13(a)(5), by exempting from the hours provisions of the Act employees employed in those "shore" activities which are necessarily somewhat affected by the same natural factors. These "shore" activities are affected primarily, however, by